

**JIM CONLEY'S
STORY
ASSAILED IN
MOTION
OF FRANK'S
COUNSEL**

Solicitor General
Dorsey Is

Served With Formal
No-

tice New Trial
Petition

Will Be Filed Within
Twenty Days.

*WITNESSES FOR
REPUDIATE
TESTIMONY*

Solicitor and
Detectives At-

tacked in Notice— Dalton Repudiates Testimony. New Witness to Alibi.

Solicitor General Hugh M. Dorsey was served Friday with formal notice of the extraordinary motion for a new trial for Leo M. Frank, to be made within the next twenty days. A large number of sensational grounds are set forth in the notice, many of which have never before been made public.

One of these is a statement from Mary Rich, a woman who operated a lunch stand in the vicinity of the pencil factory building, who swears that she saw Jim Conley, the convicted Negro accomplice, emerge from the alleyway in the rear of the pencil plant about 2:15 o'clock on the afternoon of the tragedy.

Which, it is contended by the defense, is an explanation of the broken bolt on the back door of the basement in which Mary Phagan's body was discovered, and which was an impregnable mystery throughout the trial and investigation. The Rich woman further swears that Conley bought a lunch from her, then returned through the alley.

Repudiate Testimony.

Affidavits are presented from a number of witnesses for the prosecution who repudiate their testimony against Frank. One of these is C. Brutus Dalton, the spectacular character witness, whose testimony was a sensation of the trial. Another is Dewey Hewell, the girl brought from Cincinnati, where she had been lodged in a reform school.

The Hewell girl and another witness, Ruth Robinson, declare that they were herded together in a room in the courthouse and were coached by Maggie Griffin, another witness. The Hewell girl says she frequently rehearsed her story with the Griffin woman.

Miss Robinson states that she was badgered by the solicitor general, and Mamie Kitchens, another character witness, who testified to an incident in one of the girls' dressing rooms on the second floor, now denies her story, saying she was not given sufficient time to make her story clear.

Another interesting angle of the embodiments of the application is the support of Miss Helen Kern, the girl witness who testified at the trial to having seen Frank at 1:10 o'clock at an uptown point on the day of the murder.

Saw Frank on Street.

Those who now come forward in corroboration of her story, and all of whom declare they saw Frank uptown at a time which Jim Conley swore he and the convicted superintendent were lowering the victim's body into the basement, are Samuel Pardee, a business man; a Mrs. Jaffee and Mrs. Ethel Harris Miller.

It is also set forth in the retrial plea that Ivy Jones, the Negro witness for the state who testified to having walked home with Jim Conley on the day Mary Phagan was slain, now denies his story, swearing that he did not see Conley at all on April 26.

The affidavit of Helen Ferguson is also contained in the plea. The Ferguson girl, who was a witness for the state, tells in an affidavit of having been approached threateningly by the Conley

Negro at the same spot on which the defense contends the Negro slew Mary Phagan on the Saturday prior to the horror.

Duffy's Affidavit.

An affidavit is presented from J. M. Duffy, a witness for the state, who testified that blood had dropped from a wound in his hand on a pile of waste on the second floor near the dressing room of Mary Phagan, but that none of the blood had touched the flooring.

Duffy, in his latest statement, says that Solicitor Dorsey coached him in the story he told on the stand, and that he told it according to the solicitor's dictation. He now says in the affidavit that it was entirely probable that a liberal amount of blood flowed from his hand to the flooring while he walked toward the front of the building.

The affidavit of Mrs. J. B. Simmons is the basis for a re-trial plea, and likewise an attack upon Solicitor Dorsey. In this particular ground is contained the statement that Leo Frank was seen by Mr. Dorsey during the afternoon of the murder date.

Mrs. Simmons swears that she heard screams in the pencil factory in the neighborhood of 4 o'clock on April 26, and that Solicitor Dorsey sought to get her to change her statement to fit the theory of the state.

Perhaps the most startling of the numerous grounds embodied in the motion is based on the affidavit from Mary Rich, a woman who operated a lunch cart in the vicinity of the pencil factory, who swears that she saw Jim Conley emerge from the rear of the pencil factory—through the alleyway that opens into East Hunter Street—about 2:15 o'clock on the afternoon Mary Phagan was killed.

Conley, she states, came to her lunch stand and bought a 20-cent meal, after eating which he returned to the alleyway, disappearing in it, going in the direction of the pencil plant. This is

the first time this newly-discovered piece of evidence has been made public.

Dalton Repudiates Story.

C. Brutus Dalton, the sensational

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***JIM CONLEY'S
STORY***

***ASSAILED IN
MOTION***

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character witness for the prosecution, who testified to immoral conduct of the place and of immoral associations with Frank, repudiates his story in an affidavit that is submitted in the re-trial application.

Dalton, in this new sworn statement, declares that he was approached by Detectives Starnes and Campbell previous to the trial and asked if he did not know "bad things" about the defendant Frank.

He swears that he answered in the negative, whereupon the detectives suggested that he tell a story of immoral associations with Frank, and of visits to his office with women of easy virtue.

Dalton also swears that the story he told upon the stand—or the part that was harmful to Frank—was untrue.

He likewise swears that he knows positively nothing either for or against the character of Frank.

The H. F. Becker phase of the newly-discovered evidence is set out in whole in the re-trial plea. It is as follows:

Defendant further shows that he should be granted a new trial upon the newly-discovered evidence which has come to the knowledge of the defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows: that the notes found by the body of Mary Phagan and which it is admitted were written by Jim Conley, were written on waste paper found in the basement of the factory by the body of Mary Phagan; that on the note written on yellow carbon order blank, about eight lines from the bottom of said sheet is a faint scrawl of the name “H. F. Becker” sought to be erased, but which is clearly discernible under the microscope; that also on said note is the date “Sept. 1909,” also sought to be erased, but also discernible under a powerful microscope, together with the serial number “1018”; that said sheet was a duplicate carbon order blank of a requisition sent to the Cotton States Belting and Supply Company in September, 1909, by the said H. F. Becker, who was master mechanic at the National Pencil Factory at that time, and whose business it was to secure and obtain supplies for the pencil factory, it being his practice to write out the requisition, sign it with his name and send it by an apprentice to the place from where he desired to secure the supplies; that it was the practice and custom of the said Becker to send the original requisition to the place where he secured the supplies and to retain a carbon duplicate copy thereof in his own office on the fourth floor of the pencil factory; that the said duplicate requisitions were contained in pads which remained in his office on the fourth floor of the pencil factory; that from the time Becker first entered the employ of the pencil company, until about January 1, 1912, he was allowed to obtain supplies without

obtaining the sanction or authority of any one else in the factory, his department being conducted entirely independent of other departments, and the requisitions signed by him being sent out and honored without passing through any other office of the factory; that it was his practice to keep his pads of duplicate requisitions in his office, and after having no use for same, to send them down in the basement of the factory with the other trash; that on the 27th day of December, 1912, the said Becker left the employ of the pencil factory, and that within a few weeks thereafter his office on the fourth floor of the factory was cleaned out and the trash, including papers and old pads, was gathered and taken to the basement and placed on the trash pile; that the pad from which the sheet on which Conley wrote his second note was among the pads that were carried down there from Becker's office and dumped into the basement on the trash pile and that Conley picked up said sheet from off the trash pile and wrote the aforesaid note thereon in the basement of the factory.

Numbers Correspond.

Defendant further shows that the serial number on said note namely, "1018," corresponds to the serial number of the requisition made on the Cotton States Belting and Supply Company by said Becker in September, 1909, the preceding serial numbers, 1016 and 1017, being dated September 10, 1909, and serial number 1019, the one immediately following the sheet on which Conley wrote, being dated October 6, 1909; that the serial numbers of the order pads used at the time the murder was committed was-, and that at that time there were no order blanks with serial numbers as low as No. 1018 in any part of the factory, excepting in the basement on the trash pile.

Defendant further shows that none of the order pads having the date "190" had been in the defendant's office since January 1, 1911; that since January 11, 1911, all pads that had been used for requisitions were printed with the date "191"; that on April 26, 1913, there were no "190" order pads in the factory, excepting on the trash pile in the basement.

Defendant further shows that it was the theory of the state that the crime was committed on the second floor of the factory and proved by Conley that the notes found by the body were written by Conley at defendant's dictation in defendant's office on the second floor of the factory, and that the defendant pulled the sheet on which said note was written from a pad lying on his desk in his office on the second floor of the factory.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

A copious argument is based upon the revelation of Dr. H. F. Harris pertaining to the strands of hair found upon the lathing machine near Frank's office. The argument also embodies an attack upon the methods of Solicitor General Dorsey.

The Harris angle of the re-trial plea is, in full, as follows:

Defendant shows that it has come to his knowledge, since the original motion for new trial was denied, and is a fact, that Dr. H. F. Harris, one of the state's expert witnesses, who testified at the trial as to the condition of Mary Phagan's stomach and other matters, at the instance of the solicitor general, before the trial, took the strands of hair which said Barrett claimed to have found in the metal room on the second floor, on Monday following the murder, and examined and compared them with the strands of hair which the said Harris took from the head of Mary Phagan when he performed his autopsy upon her body. The said Harris made a careful microscopic examination of the hair so taken from the body of Mary Phagan and the hair so claimed to have been found by the witness Barrett; and, as a result of said microscopic examination, said Harris discovered that the hair bore no resemblance to the hair taken from the body of Mary Phagan, either in color, texture, or other particular.

Defendant further shows that it has come to his knowledge since the original motion for new trial was denied, and is a fact,

that the said Harris, before the original trial, reported said finding of fact to the solicitor general that the said hair claimed to have been found by said Barrett was not the hair of Mary Phagan. The solicitor general then told the said Harris that he would let the investigation as to the hair end there, and the said Harris thereupon, returned to the solicitor general some of the strands of hair so claimed to have been found by Barrett. On and during the trial, said Harris was asked what parts of Mary Phagan's body he had examined, and he concealed the fact that he had examined and compared her hair with the hair found in the factory.

Mary Phagan's Hair.

It is a scientific fact that a careful microscopic examination of human hair is the only positive and certain way of identifying the same as the hair of any particular person, and that an examination by the eye, and especially from memory, is of practically no value.

This defendant shows that the witness Harris offered to permit the brother of the solicitor general, Dr. R. T. Dorsey, who was present at the original trial, assisting the solicitor general in his examination of expert witnesses, to make an examination of said hair after Harris reported that it was not Mary Phagan's hair, but that Dr. Dorsey had declined to do so.

Defendant further shows that, after the hair was delivered back to the solicitor general, he claimed to have lost it, and did not produce it at the trial, and neither this defendant, nor any of his counsel, had the opportunity of seeing it or having a microscopic examination made of it to compare with that taken from Mary Phagan's head, and neither the defendant, nor his counsel, had any knowledge whatsoever at the time of the original trial, or at the time the motion for new trial was heard, that Harris had made any such examination or had made any such report, or that the solicitor general had stated to Harris that he would let the investigation as to the hair end there.

Notwithstanding the foregoing facts, the defendant shows that, upon the trial of the case, as appears from the record, reference to which is hereby had, one of the chief facts relied on by the state to corroborate the witness James Conley, was the alleged finding of said hair by the witness Barrett. The solicitor general proved by the witness Barrett that, on Monday following the murder, he found several threads of hair on a lathe in the metal room on the second floor, where the Negro Conley claims to have found Mary Phagan's body. The solicitor general proved on his cross-examination of the witness Magnolia Kennedy that the hair alleged to have been found on the lathe resembled the hair of Mary Phagan.

Evidence Against Frank.

The solicitor general argued that the finding of this hair was one of the circumstances against Frank; that it had been found by Barrett and had been identified by Magnolia Kennedy as the hair of Mary Phagan, and in his argument to the jury, he alluded to it as a circumstance in the evidence against Frank. The solicitor general likewise alluded to it in his brief filed with the supreme court of Georgia.

The defendant here and now offers to show and prove to the court all of the facts herein set forth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material, and that it is as such an extraordinary state of facts as would probably produce a different result on another trial, and that the said facts were unknown to him and his counsel, having been concealed by the said Harris and the Solicitor General, and the same have only come to the knowledge of this defendant and his counsel since the motion for new trial was heard and passed upon, and could not have been sooner discovered by the exercise of proper diligence.

Dorsey Non-Committal.

Solicitor Dorsey received the Frank notice shortly after noon. Without reading it, he turned the sixty pages of typewritten copy over to his stenographer with instructions to make several copies.

When asked by a reporter for The Constitution if he cared to make a statement regarding this latest turn of the case, he declared that he was unable to speak upon the notice for reason of the fact that he had not read it.

"I do not even know what it contains," he stated.

It was also said that he will not turn his attention to the copy until some time next week. He left last night for Valdosta, Ga., where he goes to visit his wife, who is spending the week-end with her parents.

It is reported that the motion for re-trial will be filed before Judge Ben Hill within the next ten days or so—possibly earlier. The defense, under the law, has the right to supplement the notice of Friday with any future evidence it might see fit to embody in the motion.

The findings of Detective Burns will probably not be made public for some few days yet to come.
